



2023 REPORT

# SOUTH DAKOTA

## Report Cards on Child & Youth Sex Trafficking

*State Action. National Change.*



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# HISTORICAL BACKGROUND SOUTH DAKOTA

IN 2011, SHARED HOPE RELEASED THE NATION’S FIRST LEGAL FRAMEWORK THAT CHALLENGED states to enact laws that comprehensively address the crime of child sex trafficking. When we launched the Protected Innocence Challenge project—and issued the inaugural State Report Cards—the majority of states received an “F” grade, reflecting the reality that many states’ laws failed to even recognize the crime of child sex trafficking. Since then, we have been working to lay the foundation for transformational policy, practice, and cultural change by supporting state legislators and stakeholders in identifying gaps in the fabric of laws needed to address this heinous crime. By 2019, no state received an “F” grade, and a majority of the country received an “A” or “B.”

## PROTECTED INNOCENCE CHALLENGE

### SOUTH DAKOTA

Year	Score	Grade	8.5	17.5	15	7.5	10.5	9.5
2019	68.5	D	10	25	15	10	27.5	15
2011	54.5	F	4.5	16	12.5	5.5	6.5	9.5

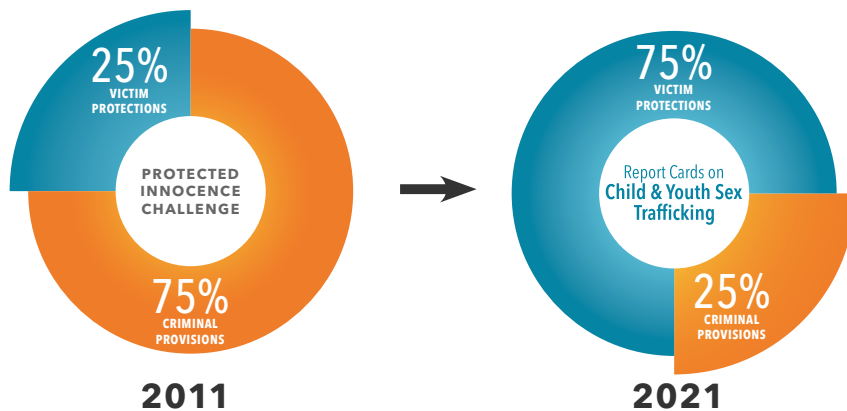
From 2011 to 2019, South Dakota raised their grade under the Protected Innocence Challenge from an “F” to a “D,” enacting legislation aimed at holding offenders accountable and protecting survivors.

To view South Dakota’s 2019 PIC report, visit [sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_SD.pdf](https://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_SD.pdf)

## A SHIFT IN FOCUS

THE PROTECTED INNOCENCE CHALLENGE PROJECT WAS SHARED HOPE’S VISION FOR MOBILIZING collective state action to ensure national change. Building on the progress already made under that project—while preserving its most fundamental components—we released a new, advanced legislative framework in 2020 that

focuses on new policy priorities reflective of feedback and research collected from the field. This framework is meant to challenge states to take the next step in the fight against sex trafficking by focusing on the area of law where the largest gaps remain—victim protections.



# ADVANCED LEGISLATIVE FRAMEWORK

**6** ISSUE AREAS IDENTIFIED:

CRIMINAL PROVISIONS

IDENTIFICATION OF & RESPONSE TO VICTIMS

CONTINUUM OF CARE

ACCESS TO JUSTICE FOR TRAFFICKING SURVIVORS

TOOLS FOR A VICTIM-CENTERED CRIMINAL JUSTICE RESPONSE

PREVENTION & TRAINING

**40** POLICY GOALS ANALYZED:

**110** TOTAL POINTS AWARDED:

States earn up to 2.5 points per policy goal

Extra credit: Protections for labor and youth 18+

100 possible points

plus up to 10 points

**FINAL LETTER GRADES ASSIGNED:**

**A** | 90-110   **B** | 80-89   **C** | 70-79   **D** | 60-69   **F** | <60

## TIER RANKING

Another way the Report Cards on Child & Youth Sex Trafficking will measure progress is through a Tier system that will help states understand how they are doing compared to other states. Especially at this stage where grades are clustered at lower levels, the Tiers help to show states where they are on a spectrum. This provides another way for states to evaluate the progress they make beyond changes to their letter grade.

### THE TIERS ARE STRUCTURED AS FOLLOWS:

- ▶ TIER 1 = TOP 10 SCORES
- ▶ TIER 2 = MIDDLE 31 SCORES
- ▶ TIER 3 = BOTTOM 10 SCORES

**F**

# SOUTH DAKOTA

## 2023 Report Card

**TIER III**









**GRADES ARE BASED SOLELY ON AN ANALYSIS OF STATE STATUTES.** While we recognize the critical importance of non-legislative responses to propel progress, grading on statutory law provides a clear mechanism for evaluating policy goals across all states while ensuring that survivor-centered reforms are an enduring part of states' responses.

**STATE HIGHLIGHTS:**

- Between 2021-2023, raised score by 7 points.
- The trafficking law expressly applies to the conduct of buyers of sex with children and prohibits mistake of age as a defense to liability.
- Business entities can be held criminally liable for conduct that violates the trafficking law.
- Crime victims' compensation laws provide victims of child sex trafficking with an exception to ineligibility for contributory conduct, promoting survivors' access to this resource.
- Allows child and youth victims of sex or labor trafficking to hold their exploiters accountable through civil processes.

**SAFE HARBOR STATUS:**

One of 21 states that fail to prohibit the criminalization of minors for prostitution offenses, thus allowing commercially sexually exploited minors to be subjected to juvenile justice processes as a result of their own victimization.

Issue	Grade	Score	Summary
 <b>1. Criminal Provisions</b>	<b>C</b>	<b>12.5</b> 17.5	Policy goals accomplished related to buyer accountability under the trafficking law, trafficker accountability under state CSEC laws, mistake of age defenses, decoy defenses, and business entity liability under the trafficking law. Gaps remain related to buyer accountability under state CSEC laws and financial penalties.
 <b>2. Identification of and Response to Victims</b>	<b>F</b>	<b>3.5</b> 27.5	Policy goal accomplished related to third party control. Gaps remain related to foreign national victims, screening through child welfare and the juvenile justice system, non-criminalization for prostitution offenses, expanded non-criminalization, juvenile court jurisdiction, child abuse definitions, and non-caregiver trafficking cases.
 <b>3. Continuum of Care</b>	<b>F</b>	<b>3</b> 15	Gaps remain in all areas, including community-based services, MDT responses, services through child welfare and the juvenile justice system, extended foster care services, and appropriations.
 <b>4. Access to Justice for Trafficking Survivors</b>	<b>F</b>	<b>8.5</b> 15	Policy goal accomplished related to civil remedies. Gaps remain related to civil orders of protection, crime victims' compensation, vacatur, restitution, and statutes of limitation.
 <b>5. Tools for a Victim-Centered Criminal Justice Response</b>	<b>D</b>	<b>6</b> 10	Gaps remain in all areas, including hearsay exceptions, alternatives to live, in-court testimony, victim-witness supports, and privileged communications.
 <b>6. Prevention and Training</b>	<b>F</b>	<b>0</b> 15	Gaps remain in all areas, including training for child welfare, juvenile justice agencies, law enforcement, prosecutors, and school personnel as well as prevention education in schools.
<b>EXTRA CREDIT</b>	 <b>18+</b> Youth	<b>1</b>	Protection related to civil remedies is extended to sex trafficked youth.
	 <b>CLT</b> Child Labor Trafficking	<b>1</b>	Protection related to civil remedies is extended to child labor trafficking victims.

**OVERALL GRADE**  
TIER III**F 35.5**

## WHAT IS SAFE HARBOR?

“Safe Harbor” refers to laws that insulate survivors from a punitive response and direct them toward funded, comprehensive, and protective services.










## WHY SAFE HARBOR?

These laws ensure survivors of child and youth sex trafficking are not involved in the juvenile or criminal justice system and receive trauma-informed care. Appropriate identification and access to services are vital to creating a just response for survivors of child and youth sex trafficking.

## SAFE HARBOR LAWS

Comprehensive Safe Harbor laws  
**SHOULD PROHIBIT  
ARRESTING, DETAINING,  
CHARGING, & PROSECUTING**  
all minors for prostitution offenses, regardless of whether a finding of trafficking victimization is made, and, instead, require law enforcement to direct child and youth survivors to  
**SPECIALIZED SERVICES & CARE.**

Safe Harbor laws  
**SHOULD ALSO PROHIBIT  
CRIMINALIZATION**  
of child sex trafficking survivors for other crimes committed as a result of their victimization.

Status	Safe Harbor Policy Goal
 Fully met	The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control (see Policy Goal 2.1 for further analysis and <a href="#">Issue Brief 2.1</a> for background).
 Not met	State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking (see Policy Goal 2.3 for further analysis and <a href="#">Issue Brief 2.3</a> for background).
 Not met	State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking (see Policy Goal 2.4 for further analysis and <a href="#">Issue Brief 2.4</a> for background).
 Not met	State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest (see Policy Goal 2.5 for further analysis and <a href="#">Issue Brief 2.5</a> for background).
 Not met	State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization (see Policy Goal 2.6 for further analysis and <a href="#">Issue Brief 2.6</a> for background).
 Not met	State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization (see Policy Goal 2.7 for further analysis and <a href="#">Issue Brief 2.7</a> for background).
 Not met	State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization (see Policy Goal 2.8 for further analysis and <a href="#">Issue Brief 2.8</a> for background).
 Not met	State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems (see Policy Goal 3.1 for further analysis and <a href="#">Issue Brief 3.1</a> for background).
 Not met	State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement (see Policy Goal 3.6 for further analysis and <a href="#">Issue Brief 3.6</a> for background).

## STATE SUMMARY:

South Dakota law does not prohibit the use of punitive processes in response to minors who engage in commercial sex, nor does it facilitate access to, or provide funding for, community-based services, leaving survivors vulnerable to re-traumatization through punitive processes and potentially underserved or disconnected from resources that are necessary to promote healing.

**SAFE HARBOR RESOURCES:** For additional information, visit [reportcards.sharedhope.org/safeharbor/](https://reportcards.sharedhope.org/safeharbor/).

**SAFE HARBOR MAP:** To see our map of state Safe Harbor law development, visit [reportcards.sharedhope.org/wp-content/uploads/2022/11/SafeHarborMapDec2022.pdf](https://reportcards.sharedhope.org/wp-content/uploads/2022/11/SafeHarborMapDec2022.pdf).

This report provides a thorough analysis of South Dakota’s statutes related to offender accountability and victim protections while providing recommendations for addressing gaps in those statutes.<sup>1</sup> This report does not analyze case law, agency rules, or regulations, nor does it analyze practices or initiatives that exist outside of statutory law. However, stakeholders were invited to share non-statutory responses to paint a fuller picture of the state’s anti-child sex trafficking response; where such responses were submitted, they are included as “Insights from the Field” under the respective policy goal but are not factored into the state’s grade.

For more information on how to use this Analysis Report, click [here](#).



## ISSUE 1: Criminal Provisions

**Policy Goal 1.1**      The child sex trafficking law is expressly applicable to buyers of commercial sex with any minor under 18.

● **FULLY MET**

S.D. Codified Laws § 22-49-1 (Human trafficking prohibited) expressly applies to buyers of commercial sex based on the term “purchase.” It states,

No person may recruit, harbor, transport, provide, receive, purchase, or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude . . . . Any violation of this section constitutes the crime of human trafficking. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion . . . .

Further, following federal precedent, S.D. Codified Laws § 22-49-1 could apply to buyers based on the term “obtains.”<sup>2</sup>

<sup>1</sup> Evaluations of state laws are based on legislation enacted as of July 1, 2023.

<sup>2</sup> See *United States v. Jungers*, 702 F.3d 1066 (8th Cir. 2013). In this case, the Eighth Circuit specifically addressed whether the federal sex trafficking law, 18 U.S.C. § 1591 (Sex trafficking of children or by force, fraud, or coercion) applies to buyers of sex with minors. Reversing a District of South Dakota ruling that Congress did not intend the string of verbs constituting criminal conduct under 18 U.S.C. § 1591(a)(1) (“recruits, entices, harbors, transports, provides, obtains, or maintains”) to reach the conduct of buyers (*United States v. Jungers*, 834 F. Supp. 2d 930, 931 (D.S.D. 2011)), the Eighth Circuit concluded that 18 U.S.C. § 1591 does not contain a “latent exemption for purchasers” because buyers can “engage in at least some of the prohibited conduct.” *Jungers*, 702 F. 3d 1066, 1072. Congress codified *Jungers* clarifying that the federal sex trafficking law is intended to apply to buyers in the Justice for Victims of Trafficking Act (JVTA) of 2015 Pub. L. No. 114-22, 129 Stat 227,

When the victim is a minor, S.D. Codified Laws § 22-49-1 is punishable under S.D. Codified Laws § 22-49-2 (First degree human trafficking – Felony), which states,

If a person is guilty of human trafficking under § 22-49-1 [Human trafficking prohibited], and the act:

- (1) Involves committing or attempting to commit kidnapping;
- (2) Involves a victim under the age of eighteen years;
- (3) Involves prostitution or procurement for prostitution; or
- (4) Results in the death of a victim;

the person has committed human trafficking in the first degree . . . .

**Policy Goal 1.2** Commercial sexual exploitation of children (CSEC) laws<sup>3</sup> specifically criminalize purchasing or soliciting commercial sex with any minor under 18.

○ NOT MET

South Dakota’s CSEC laws do not criminalize purchasing or soliciting commercial sex with a minor.

- 1.2.1 Recommendation: Enact a CSEC law that specifically criminalizes purchasing or soliciting sex with any minor under 18. (*See Issue Brief 1.2.*)

**Policy Goal 1.3** Commercial sexual exploitation of children (CSEC) laws<sup>4</sup> apply to traffickers and protect all minors under 18.

● FULLY MET

Trafficker conduct is criminalized under S.D. Codified Laws § 22-23-2 (Promotion of prostitution), which states,

Any person who:

- (1) Encourages, induces, procures, or otherwise purposely causes another to become or remain a prostitute;
  - (2) Promotes the prostitution of a minor; or
  - (3) Promotes the prostitution of his or her spouse, child, ward, or other dependent person;
- is guilty of promoting prostitution . . . .

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enacted on May 29, 2015. The JVTa adds the terms “patronize” and “solicit” to the list of prohibited conduct and expressly states, “section 108 of this title amends section 1591 of title 18, United States Code, to add the words ‘solicits or patronizes’ to the sex trafficking statute making absolutely clear for judges, juries, prosecutors, and law enforcement officials that criminals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex trafficking offenders when this is merited by the facts of a particular case.” Id. at Sec. 109. The Eighth Circuit decision in *United States v. Jungers* and the federal sex trafficking law as amended by the Justice for Victims of Trafficking Act establish persuasive authority when state courts interpret the string of verbs constituting prohibited conduct in state sex trafficking laws (in particular, the term “obtains”) to the extent such interpretation does not conflict with state case law.

<sup>3</sup> The phrase “commercial sexual exploitation of children” (or “CSEC”) encompasses a variety of criminal offenses committed against a child in which the child engages, or agrees to engage, in a sex act in exchange for something of value either directly or through a third party. Appropriately crafted CSEC laws can be important, additional tools available in a prosecution of child sex trafficking conduct by supplementing available penalties under the trafficking law and providing additional options for plea negotiations without requiring prosecutors to rely on unrelated or low-level offenses in that context. For this reason, we analyze trafficking laws separately from CSEC laws—even though both involve commercial sexual exploitation. For a complete list of South Dakota’s CSEC laws, *see* the appendix located at the end of this report.

<sup>4</sup> *See supra* note 3 for a full discussion on the purpose of analyzing trafficking laws separately from CSEC laws throughout this report.

**Policy Goal 1.4** Mistake of age is not an available defense in child sex trafficking prosecutions.

● FULLY MET

South Dakota law expressly prohibits a mistake of age defense in certain prosecutions for child sex trafficking. Pursuant to S.D. Codified Laws § 22-29-2 (First degree human trafficking – Felony – Attempt against minor), “any mistake as to the minor’s age is not defense to a charge of violating this section.”

**Policy Goal 1.5** Use of a law enforcement decoy is not an available defense in child sex trafficking cases.

● FULLY MET

Although the trafficking law does not expressly prohibit an offender from raising a defense based on the use of a law enforcement decoy posing as a minor, South Dakota’s criminal attempt statute, S.D. Codified Laws § 22-4-1<sup>5</sup> (Penalty where not otherwise specified), could provide prosecutors with an alternative avenue to prosecute those cases. S.D. Codified Laws § 22-4-1 states, “Unless specific provision is made by law, any person who attempts to commit a crime and, in the attempt, does any act toward the commission of the crime, but fails or is prevented or intercepted in the perpetration of that crime, is punishable for the attempt . . . .” Accordingly, an offender could be found guilty of attempting to commit a child sex trafficking offense if the offender committed an act in furtherance of child sex trafficking but was prevented from perpetrating the offense since the intended victim was a law enforcement decoy rather than an actual minor.

**Policy Goal 1.6** Business entities can be held criminally liable for conduct that violates the trafficking law.

● FULLY MET

South Dakota law allows business entities to be held criminally liable for conduct that violates the trafficking law. Specifically, South Dakota’s trafficking laws—S.D. Codified Laws § 22-49-1 (Human trafficking prohibited), S.D. Codified Laws § 22-49-2 (First degree human trafficking – Felony), and S.D. Codified Laws § 22-49-3 (Second degree human trafficking – Felony)—all criminalize specified conduct committed by “a person.”<sup>6</sup> Importantly, S.D. Codified Laws § 22-1-2(31) (Definitions) defines “person” to include “any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society.” Accordingly, business entities can be held liable for a trafficking violation.

**Policy Goal 1.7** State law mandates that financial penalties are levied on sex trafficking and CSEC offenders and are directed to a victim services fund.

○ NOT MET

Financial penalties, including criminal fines, fees, and asset forfeiture, paid by convicted trafficking and CSEC offenders are not required to be directed into a victim services fund.<sup>7</sup>

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<sup>5</sup> The text of S.D. Codified Laws § 22-4-1 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 48 during the 2023 Regular Session of the South Dakota state legislature (effective July 1, 2023).

<sup>6</sup> The substantive provisions for each of these offenses can be found under the “State Laws Addressing Child Sex Trafficking” section of the appendix located at the end of this report.

<sup>7</sup> Regarding asset forfeiture, S.D. Codified Laws § 22-24A-15 (Person convicted forfeits certain property interests – Distribution of seized assets) provides for forfeiture of the following property in trafficking and CSEC cases:



- 1.7.1 Recommendation: Statutorily direct a percentage of financial penalties levied on trafficking and CSEC offenders into a victim services fund. (*See Issue Brief 1.7.*)

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Any person who is convicted of an offense under . . . 22-49-1 to 22-49-3, inclusive [relating to human trafficking, first degree human trafficking, and second degree human trafficking], . . . and 22-23-2 [Promotion of prostitution] . . . , or under 18 U.S.C. . . . 1591 [Sex trafficking of children or by force, fraud, or coercion] . . . , as of January 1, 2016, shall forfeit to the state, pursuant to chapter 23A-49, the person's interest in the following and no property right exists in them:

. . . .

- (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or conceal, or that is used, or intended for use, to transport, or in any manner facilitate any activity proscribed under 22-49-1 to 22-49-3, inclusive . . . ;
- (5) Any book, record, and research, including microfilm, tape, and data that is used, or intended for use, in violation of . . . 22-49-1 to 22-49-3, inclusive . . . ;
- (6) Any funds or other things of value used for the purposes of unlawfully carrying out any activity proscribed by . . . 22-49-1 to 22-49-3, inclusive, . . . and 22-23-2 . . . ; and
- (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful activity proscribed 22-49-1 to 22-49-3, inclusive, . . . and 22-23-2 . . . .

Any property described in subdivision (1) of this section shall be deemed contraband and shall be summarily forfeited to the state. Property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the terms of § 23A-49-14 [(Procedure for filing summons and complaint for forfeiture of property)], and property described in subdivision (4) is subject to forfeiture under the terms of § 23A-49-15 [(Procedure for filing summons and complaint for forfeiture of property)].

Distribution of forfeited property is governed by S.D. Codified Laws § 23A-49-20(1), (2) (Rights of attorney general in regards to forfeited property), which states,

If property is forfeited under this chapter, the attorney general may:

- (1) Retain the property for official use;
- (2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. All money seized or remaining proceeds from the sale of any forfeited property shall be paid into the following funds:

. . . .

- (b) If seized pursuant to a violation of chapters 22-24A . . . , proceeds shall be used to reimburse the actual costs of the criminal investigation and prosecution, and any amount over those costs shall be used to satisfy any civil judgments received by the victims. All remaining proceeds shall be paid to the South Dakota internet crimes against children fund . . . .

However, state asset forfeiture laws do not direct a percentage of a sex trafficking or CSEC offender's forfeited assets into a victim services fund.



## ISSUE 2: Identification of & Response to Victims

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**Policy Goal 2.1** The definition of child sex trafficking victim in the criminal code includes all commercially sexually exploited children without requiring third party control.

● **FULLY MET**

The definition of child sex trafficking victim includes all commercially sexually exploited children without requiring third party control. S.D. Codified Laws § 22-49-1 (Human trafficking prohibited) expressly applies to buyers of commercial sex based on the term “purchase,”<sup>8</sup> meaning a buyer can be charged regardless of whether a trafficker is involved or identified. As such, third party control is not required to establish the crime of child sex trafficking or, consequently, to identify a commercially sexually exploited child as a trafficking victim.

**Policy Goal 2.2** State law provides policy guidance to facilitate access to services and assistance for trafficked foreign national children.

○ **NOT MET**

South Dakota law does not provide policy guidance that facilitates appropriate responses to foreign national child sex trafficking victims.

2.2.1 Recommendation: Statutorily provide policy guidance that facilitates access to services and assistance for trafficked foreign national children. (See [Issue Brief 2.2](#).)

**Policy Goal 2.3** State law mandates child welfare agencies to conduct trauma-informed CSEC screening for children at risk of sex trafficking.

○ **NOT MET**

South Dakota law does not require child welfare to conduct trauma-informed CSEC screening of system-involved children and youth who are at risk of sex trafficking.

2.3.1 Recommendation: Enact a state law requiring child welfare to screen system-involved children and youth at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.3](#).)

**Policy Goal 2.4** State law mandates juvenile justice agencies to conduct trauma-informed CSEC screening of children at risk of sex trafficking.

○ **NOT MET**

South Dakota law does not require juvenile justice agencies to conduct trauma-informed CSEC screening of children and youth who are at risk of sex trafficking.

2.4.1 Recommendation: Enact a state law requiring juvenile justice agencies to screen children and youth who are at risk of sex trafficking for experiences of commercial sexual exploitation. (See [Issue Brief 2.4](#).)

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<sup>8</sup> See *supra* Policy Goal 1.1 for a full discussion of buyer-applicability under S.D. Codified Laws § 22-49-1.

- Policy Goal 2.5** State law prohibits the criminalization of minors under 18 for prostitution offenses and establishes a services-referral protocol as an alternative to arrest.
- NOT MET

South Dakota law does not prohibit the criminalization of minors for prostitution offenses. Although the core prostitution law is inapplicable to minors, commercially sexually exploited minors are still subject to juvenile justice processes in response to their victimization. S.D. Codified Laws § 22-23-1 (Prostitution – Penalty) states, “A person who is eighteen years of age or older and who engages in or offers to engage in sexual activity for a fee or other compensation is guilty of prostitution, a Class 1 misdemeanor.” However, S.D. Codified Laws § 26-8B-2(6) (Child in need of supervision defined) defines children accused of status offenses to include child sex trafficking victims, stating, “For purposes of this chapter, a child in need of supervision is a child . . . [w]ho engages in prostitution by offering to engage in sexual activity for a fee or other compensation.”

Minors, including commercially sexually exploited children, who are adjudicated as a “child in need of supervision” may face a variety of punitive dispositions, including probation, participation in a supervised community service program, or commitment to the Department of Corrections. S.D. Codified Laws §§ 26-8B-2(6), 26-8B-6. Consequently, while minors may not be prosecuted for prostituted for prostitution offenses under S.D. Codified Laws § 22-23-1, child sex trafficking victims may still be subject to punitive processes and outcomes for conduct in violation of the prostitution law.

- 2.5.1 Recommendation: Strengthen existing law to prohibit the criminalization of all minors for prostitution offenses and establish a services-referral protocol in response to minors engaged in commercial sex. (See [Issue Brief 2.5](#).)

- Policy Goal 2.6** State law prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanor and non-violent felony offenses committed as a result of their trafficking victimization.
- NOT MET

South Dakota law does not prohibit the criminalization of child sex trafficking victims for status offenses nor does it prohibit charging victims with misdemeanors or non-violent felonies committed as a result of their trafficking victimization.

- 2.6.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for status offenses, and misdemeanors and non-violent felonies committed as a result of their trafficking victimization. (See [Issue Brief 2.6](#).)

- Policy Goal 2.7** State law prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.
- NOT MET

South Dakota law does not prohibit the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization.

- 2.7.1 Recommendation: Enact a law that prohibits the criminalization of child sex trafficking victims for sex trafficking and commercial sexual exploitation offenses, including accomplice and co-conspirator liability, committed as a result of their trafficking victimization. (See [Issue Brief 2.7](#).)

**Policy Goal 2.8** State law provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

○ NOT MET

South Dakota law does not provide child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization.

- 2.8.1 Recommendation: Enact a law that provides child sex trafficking victims with an affirmative defense to violent felonies committed as a result of their trafficking victimization. (See [Issue Brief 2.8](#).)

**Policy Goal 2.9** Juvenile court jurisdiction provides for a developmentally appropriate response.

● PARTIALLY MET

South Dakota law does not provide age-appropriate juvenile court responses for all minors accused of engaging in juvenile or criminal conduct. While South Dakota law extends juvenile court jurisdiction to all minors under 18 years of age, governing state statute establishes a minimum age of 10 years for jurisdictional purposes, permits direct file for older minors charged with certain felony offenses, and fails to require courts to consider the impact of trauma or past victimization in making discretionary transfer determinations.

	Minimum Age of Juvenile Court Jurisdiction	Maximum Age for Charging Youth in Juvenile Court	Automatic Transfers or Permits Direct File	Discretionary Transfers	Requirement for Court to Consider Trauma or Past Victimization
<b>Summary</b>	10. “Delinquent child” is defined as “any child ten years of age or older . . . .”	17.	Yes. Minors: (1) Previously transferred to criminal court; or (2) 16+ years of age charged with a Class A, B, C or Class 1 or 2 felony offense.	Yes. Minors charged with felony offenses.	No.
<b>Relevant Statute(s)</b>	S.D. Codified Laws § 26-8C-2 (Delinquent child defined)	S.D. Codified Laws § 26-7A-1(6) (Definitions); S.D. Codified Laws § 26-8C-2 (Delinquency child defined)	S.D. Codified Laws § 26-11-4 (Transfer hearing – Factors and evidence considered – Disposition); S.D. Codified Laws § 26-11-3.1	S.D. Codified Laws § 26-11-4 (Transfer hearing – Factors and evidence considered – Disposition)	S.D. Codified Laws § 26-11-4 (Transfer hearing – Factors and evidence considered – Disposition)

Consequently, some minors may still be subjected to age-inappropriate juvenile court responses due to state laws that: (1) fail to establish a minimum age for juvenile court jurisdiction that aligns with domestic standards; (2) allow some juvenile cases to be subject to direct file; and (3) do not require the juvenile court to consider past trafficking victimization or trauma when making a transfer determination.

- 2.9.1 Recommendation: Enact comprehensive state laws requiring age-appropriate juvenile court responses for all children accused of engaging in juvenile or criminal conduct. (See [Issue Brief 2.9](#).)

**Policy Goal 2.10** State law defines child abuse to include child sex trafficking to ensure access to child welfare services.

○ NOT MET

South Dakota law does not include child sex trafficking or commercial sexual exploitation of children in the definition of “abused or neglected child.” Pursuant to S.D. Codified Laws § 26-8A-2(8) (Abused or neglected child), “the term, abused or neglected child, means a child . . . [w]ho is subject to sexual abuse, sexual molestation,” which are not defined in the child welfare code, “or sexual exploitation as defined in § 22-22-24.3 . . . ,” which is not defined to include child sex trafficking or commercial sexual exploitation of children.

2.10.1 Recommendation: Amend the definition of “abused or neglected child” to expressly include child sex trafficking. (See [Issue Brief 2.10](#).)

**Policy Goal 2.11** State law allows for child welfare involvement in sex trafficking cases that do not involve caregiver fault and provides for an alternative, specialized response in those cases.

○ NOT MET

South Dakota’s child welfare code does not allow for a child welfare response in non-caregiver child sex trafficking cases. Pursuant to S.D. Codified Laws § 26-8A-2(8) (Abused or neglected child), the definition of “abused or neglected child” is limited to acts committed “by the child’s parent, guardian, custodian, or any other person responsible for the child’s care.” Further, a specialized response is not statutorily required for children reported to child welfare due to trafficking victimization perpetrated by a non-caregiver trafficker.

2.11.1 Recommendation: Statutorily allow for child welfare involvement in child sex trafficking cases regardless of parent or caregiver fault and provide for a specialized response in those cases. (See [Issue Brief 2.11](#).)



## ISSUE 3: Continuum of Care

**Policy Goal 3.1** State law mandates a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems.

○ NOT MET

South Dakota law does not mandate a process for coordinating access to specialized, community-based services for child sex trafficking victims that does not require involvement in a child-serving system.

3.1.1 Recommendation: Statutorily mandate a process for coordinating access to specialized services for child sex trafficking victims that does not require involvement in child-serving systems. (See [Issue Brief 3.1](#).)

**Policy Goal 3.2** State law provides for a survivor-centered multi-disciplinary team response to child sex trafficking cases.

● PARTIALLY MET

Although child sex trafficking victims could receive a multi-disciplinary team (MDT) response through a general MDT, South Dakota law does not require an MDT response specific to child sex trafficking cases. Pursuant to S.D. Codified Laws § 23A-28C-15 (Interagency multidisciplinary teams. Sharing information),

[A] team shall consist of law enforcement personnel, a representative of the prosecuting attorney's office, licensed or certified medical professionals, and any victim advocate. Any interagency multidisciplinary team formed to investigate crimes involving child victims shall also include child advocacy center staff where such staff is available in the region, Department of Social Services child protection staff, and licensed or certified mental health professionals. The team may include additional members at the discretion of the team if the additional member would benefit the victim. Each multidisciplinary team shall have written procedures and guidelines. . . .

3.2.1 Recommendation: Statutorily require a multi-disciplinary team response specific to child sex trafficking victims. (See [Issue Brief 3.2](#).)

**Policy Goal 3.3** State law requires child welfare to provide access to specialized services for identified sex trafficked children and youth.

○ NOT MET

South Dakota law does not require child welfare to provide access to services that are specialized to the unique needs of child sex trafficking victims.

3.3.1 Recommendation: Statutorily require child welfare to provide access to specialized services for child sex trafficking victims. (See [Issue Brief 3.3](#).)

**Policy Goal 3.4** State law requires the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth.  
○ NOT MET

South Dakota law does not provide access to specialized services for identified sex trafficked children and youth in the juvenile justice system.

3.4.1 Recommendation: Statutorily require the juvenile justice system to provide access to specialized services for identified sex trafficked children and youth. (See [Issue Brief 3.4.](#))

**Policy Goal 3.5** State law extends foster care services to older foster youth.  
● PARTIALLY MET

South Dakota law extends foster care services to youth under 21 years of age through a continued foster care provision. However, these services are not extended to youth under 23 years of age as permitted under federal law.<sup>9</sup> Specifically, S.D. Codified Laws § 26-6-6.1 (Continued foster care for persons over the age of majority) provides,

Notwithstanding the provisions of §§ 26-1-1 and 26-7A-101, any child welfare agency, including the department of social services, may continue to provide foster care for a person over the age of majority but less than twenty-one years of age if the person was in foster care immediately prior to reaching the age of majority and has not yet completed the twelfth grade of school or is in a continuing course of remedial treatment and if the person consents in writing to continued foster care.

3.5.1 Recommendation: Strengthen existing law to better support transition age youth by extending transitional foster care services to youth under 23 years of age. (See [Issue Brief 3.5.](#))

**Policy Goal 3.6** State funding is appropriated to support specialized services and a continuum of care for sex trafficked children regardless of system involvement.  
○ NOT MET

The South Dakota state legislature did not appropriate funds to support the development and provision of specialized, community-based services and care to child and youth survivors.

3.6.1 Recommendation: Appropriate state funds to support the development of and access to specialized, community-based services to child and youth survivors of sex trafficking. (See [Issue Brief 3.6.](#))

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<sup>9</sup> For more information, see Shared Hope Int'l, *Issue Brief 3.5: Continuum of Care*, <https://reportcards.sharedhope.org/related-resources/#3.5> (discussing federal laws that allow for funded foster care services to be extended to youth under 23 years of age).



## ISSUE 4: Access to Justice for Trafficking Survivors

### Policy Goal 4.1 State law allows trafficking victims to seek emergency civil orders of protection.

○ NOT MET

While civil orders of protection exist under South Dakota law, this protection is not expressly available to victims of child sex trafficking and CSEC.

- 4.1.1 Recommendation: Enact legislation expressly allowing victims of trafficking and CSEC to obtain ex parte civil orders of protection against their exploiters. (See [Issue Brief 4.1](#).)

### Policy Goal 4.2 Ineligibility factors for crime victims' compensation do not prevent victims of child sex trafficking and commercial sexual exploitation of children (CSEC) from accessing compensation.

● PARTIALLY MET

South Dakota's crime victims' compensation laws provide victims of child sex trafficking with an exception to ineligibility for contributory conduct; however, CSEC victims are not likewise protected, and other ineligibility factors may still prevent child sex trafficking victims from accessing an award.

For purposes of accessing crime victims' compensation, S.D. Codified Laws § 23A-28B-1(12)(a) (Definition of terms) defines "victim" to include "any person who suffers personal injury<sup>10</sup> or death as a direct result of . . . [a] crime, including a federal crime occurring in this state . . . ." "Crime" is defined under S.D. Codified Laws § 23A-28B-1(3) as follows:

[C]onduct that occurs or is attempted in this state, including that arising from domestic violence, human trafficking, and acts of terrorism, as defined in 18 USC § 2331 as of January 1, 1997, which conduct results in personal injury or death and is punishable as a felony or misdemeanor, or would be so punishable except that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state . . . .

Despite this broad definition, certain ineligibility factors may still limit a commercially sexually exploited child's ability to seek crime victims' compensation. Pursuant to S.D. Codified Laws § 23A-28B-25(1), (2) (Circumstances not permitting compensation),

No claim for compensation may be awarded:

- (1) Unless an application for compensation is filed with the department within one year after the date of the personal injury or death and the personal injury or death was the result of a crime which had been reported to a law enforcement officer or agency within five days of its occurrence or, if the crime could not reasonably have been reported within that period, within five days of the date when a report could reasonably have been made. The department may waive the one year application requirement for good cause shown;

- (2) If the victim:

. . . .

- (b) Committed or otherwise participated in a crime which caused or contributed to the victim's

<sup>10</sup> S.D. Codified Laws § 23A-28B-1(11) defines "personal injury" as "actual bodily harm or emotional distress."



injury or death;

(c) Fails or refuses to cooperate fully with any appropriate law enforcement officer or agency or with the department in the administration of this chapter. If a claimant other than a victim fails or refuses to cooperate pursuant to this subsection, no compensation may be awarded to that claimant; or

Notably, South Dakota law carves out an exception to ineligibility for contributory conduct. Because the exception is offense-specific, however, only victims of trafficking, not CSEC, will be protected. Specifically, S.D. Codified Laws § 23A-28B-25(2)(a) (Circumstances not permitting compensation) states,

No claim for compensation may be awarded:

....

(2) If the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or engaged in conduct which the victim should reasonably have foreseen could lead to the injury or death. However, this subsection does not apply to . . . any victim of . . . human trafficking under chapter 22-49 . . . .

4.2.1 Recommendation: Statutorily exempt victims of child sex trafficking and CSEC from ineligibility factors for crime victims' compensation. (See [Issue Brief 4.2](#).)

**Policy Goal 4.3** Sex trafficked children and youth may vacate delinquency adjudications and criminal convictions for any offense arising from trafficking victimization.

 PARTIALLY MET

Although South Dakota law allows child sex trafficking victims to vacate delinquency adjudications, vacatur is unavailable for criminal convictions arising from trafficking victimization, leaving sex trafficked youth without access to this important form of relief. Pursuant to S.D. Codified Laws § 26-7A-115.1 (Victim of human trafficking or sexual exploitation – Expungement of delinquency record),

A victim of human trafficking may petition the court directly or through a parent, guardian, or guardian ad litem, for the expungement of a delinquency record that resulted from being a victim of human trafficking, as defined in § 22-49-1 [Human trafficking prohibited], or sexual exploitation, as defined in § 22-22-24.3 [Sexual exploitation of minor – Consent or mistake not a defense – Penalty]. An expungement under this section vacates the underlying delinquency proceeding.

4.3.1 Recommendation: Strengthen existing law by allowing trafficking victims to vacate criminal convictions for any offense arising from trafficking victimization. (See [Issue Brief 4.3](#).)

**Policy Goal 4.4** State law mandates restitution for child sex trafficking and commercial sexual exploitation of children (CSEC) offenses.

● **PARTIALLY MET**

Restitution is mandatory in cases involving child sex trafficking but not CSEC.<sup>11</sup> Pursuant to S.D. Codified Laws § 23A-28-12 (Minor Victim’s Medical, Psychological or Psychiatric Treatment or Foster Care – Sentence Requiring Payment),

Anyone convicted under . . . subdivision 22-49-2(2) [First degree human trafficking] . . . shall be required as part of the sentence imposed by the court to pay all or part of the cost of any necessary medical, psychological, or psychiatric treatment, or foster care of the minor resulting from the act or acts for which the defendant is convicted.

Restitution is available more generally to victims of other crimes under S.D. Codified Laws § 23A-28-3<sup>12</sup> (Restitution – Present inability to pay – Absence of pecuniary damages – Condition of parole); however, restitution under S.D. Codified Laws § 23A-28-3 is discretionary. It states,

If the sentencing court orders the defendant to the county jail, suspended imposition of sentence, suspended sentence, or probation, the court may require as a condition that the defendant, in cooperation with the court services officer assigned to the defendant, promptly prepare a plan of restitution, including the name and address of each victim,<sup>13</sup> a specific amount of restitution to each victim, and a schedule of restitution payments . . . . If the sentencing court orders the defendant to a state correctional facility and does not suspend the sentence, the court shall set forth in the judgment the names and specific amount of restitution owed each victim . . . .

4.4.1 Recommendation: Statutorily mandate restitution in CSEC cases. (*See Issue Brief 4.4.*)

**Policy Goal 4.5** State law provides child sex trafficking victims with a trafficking-specific civil remedy.

● **FULLY MET**

South Dakota law allows victims of child sex trafficking to pursue civil remedies against their exploiters. Pursuant to S.D. Codified Laws § 20-9-46 (Civil cause of action for wrongful human trafficking), “A victim of human trafficking pursuant to chapter 22-49 [Human trafficking], or any federal human trafficking offense, may bring a civil cause of

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<sup>11</sup> Notably, S.D. Codified Laws § 23A-28-1 (Policy of State – Enforcement) states,

It is the policy of this state that restitution shall be made by each violator of the criminal laws to the victims of the violator’s criminal activities to the extent that the violator is reasonably able to do so. An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.

<sup>12</sup> The text of S.D. Codified Laws § 23A-28-3 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 52 during the 2023 Regular Session of the South Dakota state legislature (effective July 1, 2023).

<sup>13</sup> S.D. Codified Laws § 23A-28-2(5) (Definitions) defines “victim” as “any person . . . who has suffered pecuniary damages as a result of the defendant’s criminal activities . . . .” “Pecuniary damages” is defined under S.D. Codified Laws § 23A-28-2(3) as “all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium. Without limitation, the term includes damages for wrongful death.” Lastly, S.D. Codified Laws § 23A-28-2(2) defines “criminal activities” as “any crime for which there is a plea of guilty or verdict of guilty upon which a judgment of conviction may be rendered and any other crime committed after June 30, 1979, which is admitted by the defendant, whether or not prosecuted. However, the term does not include petty offenses.”

action for wrongful human trafficking.” Further, S.D. Codified Laws § 22-24A-8 (Civil liability for sexual offense – Offenses creating liability) states,

Any of the following persons may bring an action for damages caused by another person’s conduct as proscribed by §§ . . . 22-24B-1 [“Sex crime” defined],<sup>14</sup> . . . 22-49-1 to 22-49-3 [Human trafficking], inclusive . . . :

- (1) The child;
- (2) Any parent, legal guardian, or sibling of a victimized child;
- (3) Any medical facility, insurer, governmental entity, employer, or other entity that funds a treatment program or employee assistance program for the child or that otherwise expended money or provided services on behalf of the child;
- (4) Any person injured as a result of the willful, reckless, or negligent actions of a person who knowingly participated in conduct proscribed by §§ . . . 22-24B-1, 22-49-1 to 22-49-3, inclusive . . . .

The following types of damages may be recovered under S.D. Codified Laws § 22-24A-10 (Civil liability for sexual offenses – Types of damages recoverable):

- (1) Economic damages, including the cost of treatment and rehabilitation, medical expenses, loss of economic or educational potential, loss of productivity, absenteeism, support expenses, accidents or injury, and any other pecuniary loss proximately caused by the proscribed conduct;
- (2) Noneconomic damages, including physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, loss of companionship, services, and consortium, and other nonpecuniary losses proximately caused by the proscribed conduct;
- (3) Exemplary damages;
- (4) Attorneys’ fees; and
- (5) Disbursements.

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<sup>14</sup> S.D. Codified Laws § 22-24B-1(9), (21)–(22) (Sex crimes determined) defines “sex crime” to include the following offenses:

- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- . . . .
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor;

## EXTRA CREDIT



South Dakota law provides sex trafficked youth with a trafficking-specific civil remedy under S.D. Codified Laws § 20-9-46 and S.D. Codified Laws § 22-24A-8, which apply broadly to all victims of North Dakota's sex trafficking offenses regardless of the victim's age.



South Dakota law provides child labor trafficking victims with a trafficking-specific civil remedy under remedy under S.D. Codified Laws § 20-9-46 and S.D. Codified Laws § 22-24A-8, which apply broadly to all victims of North Dakota's trafficking offenses, including both sex and labor trafficking.

**Policy Goal 4.6** Statutes of limitation for criminal and civil actions for child sex trafficking or commercial sexual exploitation of children (CSEC) offenses are eliminated to allow prosecutors and victims a realistic opportunity to pursue criminal action and legal remedies.

**1** PARTIALLY MET

South Dakota law lengthens, but does not eliminate, the statute of limitation for filing trafficking-specific civil actions; however, the criminal statutes of limitation for trafficking and CSEC offenses are not lengthened or eliminated.

Regarding civil actions, S.D. Codified Laws § 22-24A-13 (Civil liability for sexual offense – Statute of limitations) states, “Any action for damages under §§ . . . 22-24B-1 [“Sex crime” defined],<sup>15</sup> 22-49-1 to 22-49-3 [Human trafficking], inclusive, . . . shall be commenced within six years of the time the plaintiff knew, or had reason to know, of any injury caused by violations of [these offenses].” In contrast, S.D. Codified Laws § 15-2-14(3) (Action for personal injury, and various other actions – Three-year limitation) establishes a 3-year statute of limitation for personal injury actions.

For most criminal actions, including prosecutions for child sex trafficking and CSEC, S.D. Codified Laws § 23A-42-2 (Seven-year limitations period for other prosecutions) establishes a 7-year statute of limitation; it states,

In all other prosecutions for a public offense and all proceedings of a quasi-criminal or penal nature, including the forfeiture of existing rights, the proceedings shall be commenced within seven years after the commission of the offense or crime which is the basis of the prosecution or proceedings, except as provided in § 23A-42-3 [Forgery or theft – Limitations period commencing upon discovery of crime].

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<sup>15</sup> S.D. Codified Laws § 22-24B-1(9), (21)–(22) (Sex crimes determined) defines “sex crime” to include the following offenses:

- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- ....
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor;

- 4.6.1 Recommendation: Strengthen existing law to allow prosecutions for child sex trafficking and CSEC offenses to commence at any time and eliminate the statute of limitation for filing trafficking-specific civil actions. (See [Issue Brief 4.6.](#))



## ISSUE 5: Tools for a Victim-Centered Criminal Justice Response

**Policy Goal 5.1** Non-testimonial evidence may be admitted through a child sex trafficking-specific hearsay exception to reduce reliance of victim testimony.

○ NOT MET

South Dakota law does not allow non-testimonial, out-of-court statements made by a commercially sexually exploited child to be admitted into evidence in lieu of, or for the purpose of corroborating, the child's testimony.

5.1.1 Recommendation: Enact a hearsay exception that applies to non-testimonial evidence in cases involving commercial sexual exploitation of children under 18 years of age. (See [Issue Brief 5.1](#).)

**Policy Goal 5.2** State law provides child sex trafficking victims with alternatives to live, in-court testimony regardless of the prosecuted offense.

● PARTIALLY MET

South Dakota law provides commercially sexually exploited children with alternatives to live, in-court testimony; however, these protections are only available to younger minors. Specifically, S.D. Codified Laws § 26-8A-30 (Testimony of child by closed circuit television – When permitted – Hearing) permits the court to order the testimony of a child under 16 years of age to be taken by closed circuit television (CCIV), stating,

In any proceeding in which a child under the age of sixteen . . . is describing any act of sexual contact or rape performed with or on the child by another, any act of physical abuse or neglect of the child by another, any act of physical abuse or neglect of another child, any act of human trafficking of the child by another, or any act constituting a crime of violence<sup>16</sup> as defined in § 22-1-2 committed against the child or another child, the court or any party may move to allow that the testimony of the child be taken in a room other than the courtroom and televised at the same time to the courtroom by closed circuit television equipment. Prior to allowing the child to testify under this section, the court shall hold a hearing outside the presence of the jury and make a finding on the record that testimony by the child in the courtroom will cause the child to suffer more than de minimis emotional distress and that testifying under the provisions of this section is necessary to protect the welfare of the child.<sup>17</sup>

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<sup>16</sup> S.D. Codified Laws § 22-1-2(9) (Definitions) defines “crime of violence” to include the following:

[A]ny of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device.

<sup>17</sup> Pursuant to S.D. Codified Laws § 26-8A-31 (Testimony of child by closed circuit television – Persons permitted to be present – Presence of defendant),

Further, S.D. Codified Laws § 23A-12-9 (Videotape of young sex crime victim's testimony at preliminary hearing or deposition) allows for admission of a videotaped deposition to be admitted in lieu of live testimony, stating,

If a victim is less than sixteen years of age at the time of a preliminary hearing or deposition, a prosecuting attorney or defense attorney may apply for an order that the victim's testimony at the preliminary hearing or deposition, in addition to being stenographically recorded, be recorded and preserved on video, if a defendant has been charged with a violation of:

- (1) Subdivision 22-22-1(1) or (5) [Rape];
- (2) § 22-22-7 [Sexual contact with child under sixteen]; or
- (3) § 22-49-2 [First degree human trafficking – Felony].

. . . . If, at the time of trial, the court finds that the victim is otherwise unavailable within the meaning of subdivision 19-19-804(a) [Exceptions to rule against hearsay – When declarant unavailable as witness], or that such testimony would in the opinion of the court be substantially detrimental to the well-being of the victim, the court may admit the video of the victim's testimony at the preliminary hearing or deposition as former testimony under subsection 19-19-804(b)(1).

As noted above, however, older minors are excluded from protection under both S.D. Codified Laws § 26-8A-30 and S.D. Codified Laws § 23A-12-9, increasing their risk of re-traumatization from testifying.

- 5.2.1 Recommendation: Strengthen existing protections to allow all commercially sexually exploited children to testify by an alternative method regardless of the child's age. (*See [Issue Brief 5.2](#).*)

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At the taking of testimony pursuant to § 26-8A-30, the public must be excluded from the room in which the child is testifying. The court shall determine those persons permitted to be physically present. The court, in its discretion, may permit in the room a person whose presence would contribute to the well-being of the child or the reduction of apprehension of the child during the testimony. Attorneys for the parties may not be excluded.

If the court makes a specific finding, outside the presence of the jury, that the presence of the defendant, or in a civil case, the presence of the respondent, in the same room as the child, will cause substantial emotional distress to the child and that such distress would impair the ability of the child to communicate, upon such finding the court may exclude the defendant from the room in which the child is testifying. However, if the defendant is excluded, the testimony of the child shall be by two-way, closed-circuit television such that the testimony of the child is televised in the courtroom and simultaneously thereto, a monitor in the room in which the child is testifying displays a view of the courtroom which view shall include the defendant. The right to have the defendant's image televised in the room in which the child is testifying is a right of the defendant which the defendant may waive. If the defendant is excluded from the room in which the child is testifying, the court must provide for instantaneous communication between the defendant and defense counsel and grant reasonable court recesses during the testimony for consultation between the defendant and defense counsel. The court may communicate by audio system with attorneys outside of the courtroom.

If, on the motion of the prosecuting attorney and outside the presence of the jury, the court makes a specific finding that the child will suffer substantial emotional distress that will impair the ability of the child to communicate due to the presence of the jury, the court may exclude the jury from the room in which the child is testifying. The testimony of the child must be televised at the same time to the courtroom by closed circuit television equipment.

The text of S.D. Codified Laws § 26-8A-31 cited here and elsewhere in this report includes amendments made by the enactment of Senate Bill 70 during the 2023 Regular Session of the South Dakota state legislature (effective July 1, 2023).

**Policy Goal 5.3**

Child sex trafficking victims have access to victim protections in the criminal justice system.

**● PARTIALLY MET**

	Child sex trafficking victims have the right to a victim advocate	Child sex trafficking victims testifying against their exploiter are provided supports in the courtroom	Child sex trafficking victims' identifying information is protected from disclosure in court records
<b>Summary</b>	A victim or witness assistant provides various supports to crime victims and may accompany a victim in any criminal proceeding. The board of county commissioners may appoint a victim witness assistant to assist victims of crimes.	Victims under the age of 18 have a right to request a therapy dog accompany them during testimony. Victims under the age of 16 are also permitted to have a support person present/in close proximity.	Not statutorily required.
<b>Relevant Statute(s)</b>	S.D. Codified Laws § 23A-28C-8(5) (Victim or Witness assistant); S.D. Codified Laws § 23A-28C-7(Victim or Witness assistant – Appointment)	S.D. Codified Laws § 23A-24-10 (Certified therapeutic dogs – Definitions); S.D. Codified Laws § 26-8A-30 (Testimony of child by closed circuit television – When permitted – Hearing); S.D. Codified Laws § 26-8A-31 (Testimony of child by closed circuit television – Persons permitted to be present – Presence of defendant); Enacted Senate Bill 70, § 2(3), (5) <sup>18</sup> (2023)	None.

5.3.1 Recommendation: Statutorily require that child sex trafficking victims' identifying information is protected from disclosure in court records. (See [Issue Brief 5.3](#).)

**Policy Goal 5.4**

State law provides for privileged communications between caseworkers and child sex trafficking victims.

**● PARTIALLY MET**

South Dakota law does not provide for privileged communications between caseworkers and child sex trafficking victims specifically. However, child sex trafficking victims may benefit from privileged communications protections provided to certain behavioral and mental health professionals and clients if the victim received care or services from such professionals.

Statute	Profession	Relevant Limitations
S.D. Codified Laws § 19-19-508.1 (Communications between student and elementary or secondary school)	School counselors, school psychologists & school social workers	None.

<sup>18</sup> Senate Bill 70 cited here and elsewhere in this was enacted during the 2023 Regular Session of the South Dakota state legislature (effective July 1, 2023).



counselor or psychologist privileged – Exceptions)		
S.D. Codified Laws § 19-19-503 (Physician and psychotherapist-patient privilege – Definitions – General rule – Who may claim – Exceptions)	Psychologists	None.
S.D. Codified Laws § 36-32-78 (Privileged information – Exceptions)	Licensed professional counselors	None.
S.D. Codified Laws § 36-26-30 (Disclosure of personal information)	Licensed social workers	None.

5.4.1 Recommendation: Enact a child sex trafficking-specific caseworker privilege law that protects a child sex trafficking victim’s communications with a caseworker from being disclosed. (See [Issue Brief 5.4.](#))



## ISSUE 6: Prevention & Training

**Policy Goal 6.1** State law mandates statewide training for child welfare agencies on identification and response to child sex trafficking.

○ NOT MET

South Dakota law does not mandate statewide training for child welfare agencies on identification and response to child sex trafficking.

6.1.1 Recommendation: Statutorily mandate statewide training for child welfare agencies on identification and response to child sex trafficking. (See [Issue Brief 6.1.](#))

**Policy Goal 6.2** State law mandates statewide training for juvenile justice agencies on identification and response to child sex trafficking.

○ NOT MET

South Dakota law does not mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking.

6.2.1 Recommendation: Statutorily mandate statewide training for juvenile justice agencies on identification and response to child sex trafficking. (See [Issue Brief 6.2.](#))

**Policy Goal 6.3** State law mandates ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

○ NOT MET

South Dakota law does not mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement.

6.3.1 Recommendation: Statutorily mandate ongoing, trafficking-specific training on victim-centered investigations for law enforcement. (See [Issue Brief 6.3.](#))

**Policy Goal 6.4** State law mandates trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

○ NOT MET

South Dakota law does not mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors.

6.4.1 Recommendation: Statutorily mandate trafficking-specific training on victim-centered investigations and prosecutions for prosecutors. (See [Issue Brief 6.4.](#))

**Policy Goal 6.5** State law mandates child sex trafficking training for school personnel.

○ NOT MET

South Dakota law does not mandate training on child sex trafficking for school personnel.

- 6.5.1 Recommendation: Statutorily mandate trafficking-specific prevention education training for school personnel. (See [Issue Brief 6.5](#).)

**Policy Goal 6.6** State law mandates child sex trafficking prevention education in schools.

○ NOT MET

South Dakota law does not mandate child sex trafficking prevention education in schools.

- 6.6.1 Recommendation: Statutorily mandate developmentally and age-appropriate child sex trafficking prevention education in schools. (See [Issue Brief 6.6](#).)

## State Laws Addressing Child Sex Trafficking

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1. S.D. Codified Laws § 22-49-1 (Human trafficking prohibited) states,

No person may recruit, harbor, transport, provide, receive, purchase,<sup>19</sup> or obtain, by any means, another person knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution, forced labor, or involuntary servitude. No person may benefit financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section. Any violation of this section constitutes the crime of human trafficking. If the victim is under eighteen years of age, the crime of human trafficking need not involve force, fraud, or coercion . . .

2. S.D. Codified Laws § 22-49-2 (First degree human trafficking – Felony) states,

If a person is guilty of human trafficking under § 22-49-1 [Human trafficking prohibited], and the act:

- (1) Involves committing or attempting to commit kidnapping;
- (2) Involves a victim under the age of eighteen years;
- (3) Involves prostitution or procurement for prostitution; or
- (4) Results in the death of a victim;

the person has committed human trafficking in the first degree. A violation of the provisions of this section is a Class 2 felony . . . Notwithstanding the provisions of § 22-4-1, any attempt to commit a violation of this section against a victim who is a minor is punishable in the same manner as the completed violation.

A Class 2 felony is punishable by imprisonment for up to 25 years and a fine of \$50,000. S.D. Codified Laws § 22-6-1(5) (Felonies – Classification – Penalties).

3. S.D. Codified Laws § 22-49-3(2) (Second degree human trafficking – Felony) states,

A person is guilty of human trafficking in the second degree if that person:

. . . .

- (2) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in this section.

Human trafficking in the second degree is a Class 4 felony.

A Class 4 felony is punishable by imprisonment for up to 10 years and a fine of \$20,000. S.D. Codified Laws § 22-6-1(7) (Felonies – Classification – Penalties).

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<sup>19</sup> S.D. Codified Laws § 22-49-4 (Penalty for hiring or attempting to hire someone to engage in sexual activity for a fee) also criminalizes purchasing sex but applies to adult victims based on the “force” requirement; it states,

It is a Class 6 felony for a person to hire or attempt to hire another person for a fee to engage in sexual activity . . . if the person knew or should have known the other person was being forced to engage in the activity through human trafficking.

## State Laws Addressing Commercial Sexual Exploitation of Children (CSEC)

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1. S.D. Codified Laws § 22-23-2 (Promotion of prostitution) states,

Any person who:

- (1) Encourages, induces, procures, or otherwise purposely causes another to become or remain a prostitute;
  - (2) Promotes the prostitution of a minor; or
  - (3) Promotes the prostitution of his or her spouse, child, ward, or other dependant person;
- is guilty of promoting prostitution. Promoting prostitution is a Class 5 felony.

A Class 5 felony is punishable by imprisonment for up to 5 years and a fine of \$10,000. S.D. Codified Laws § 22-6-1(8) (Felonies – Classification – Penalties).

## RESOURCES

**REPORT CARDS PROJECT:** For more information on the Report Cards Project, visit [reportcards.sharedhope.org](https://reportcards.sharedhope.org).

**TOOLKIT:** To see how your state compares, visit [reportcards.sharedhope.org/toolkit](https://reportcards.sharedhope.org/toolkit).

**RELATED RESOURCES:** To better understand a policy goal or to see where the nation stands as a whole on a particular issue, visit [reportcards.sharedhope.org/related-resources](https://reportcards.sharedhope.org/related-resources) and click on the corresponding issue brief or survey chart, respectively.

## HIGHLIGHTED RESOURCES

### Community-Based Services White Paper



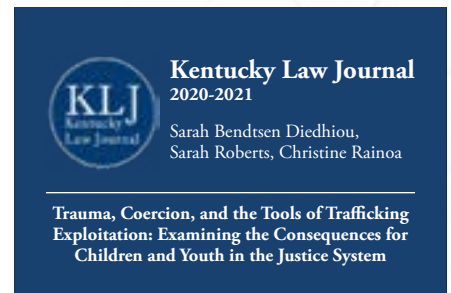
This white paper discusses the importance of providing comprehensive, trauma-informed services to all child sex trafficking victims, regardless of system involvement, and provides examples of state statutory responses.

### Victim-Offender Intersectionality Report



This report examines the phenomenon of sex trafficking survivors entering the criminal justice system for allegedly engaging in sex trafficking conduct and provides tools for criminal justice stakeholders to assist in identifying and responding to these cases in a trauma-informed manner.

### Trauma, Coercion, and the Tools of Trafficking Exploitation



This law journal article examines the harms of relying on a juvenile justice-based response for serving child sex trafficking victims, the importance of enacting strong non-criminalization laws, the intertwined nature of sex trafficking victimization and criminalized conduct, and the importance of using a trauma-informed lens in response.

## TECHNICAL ASSISTANCE

For legislators and policy advocates assisting elected officials in creating legislation, request a consultation with our Policy Team online at [sharedhope.org/legislative-technical-assistance](https://sharedhope.org/legislative-technical-assistance). We will set up a meeting to discuss your legislative goals and create a customized plan for ongoing technical assistance, bill drafting services, and legislative support.

## ADVOCACY ACTION CENTER

The Advocacy Action Center is an online resource that allows individuals to join the fight against child sex trafficking either through legislator engagement or by signing a petition. For more information, visit [act.sharedhope.org/actioncenter](https://act.sharedhope.org/actioncenter).



Contact your legislators, letting them know you want greater protections for child sex trafficking victims and increased accountability for their exploiters.



Sign a petition to show your support for issues that advance justice for child sex trafficking survivors.



Help end the criminalization of child sex trafficking survivors! Several states can still criminalize child sex trafficking victims for prostitution. Sign the petition to show your support for changing these laws.